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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,128

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Timothy Roberts

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BRINKS HOFER GILSON & LIONE / YAHOO! OVERTURE

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EXAMINER

PESIN, BORIS M

ART UNIT

PAPER NUMBER

2174

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/800,128	<b>Applicant(s)</b> ROBERTS ET AL.	
	<b>Examiner</b> BORIS PESIN	<b>Art Unit</b> 2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This communication is responsive to the amendment filed 12/16/2008.

Claims 1-41 are pending in this application. Claims 1, 11, 18, 25, 30, 33, 36, and 39 are independent claims. In the amendment filed 12/16/2008, Claims 18-20 were amended. This action is made Final.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The use of the word "system" does not inherently mean that the claim is directed to a machine. None of the claimed elements of the system are a physical part of the device. Even though the Applicant has invoked the rebuttable presumption that 35 USC 112 6<sup>th</sup> paragraph applies in the "processing means for" interpretation, it is entirely possible for the corresponding disclosed "processing means" to cover an embodiment of the software alone. Based on the other claims in the application, it is likely that the "processing means" is the program code itself. Thus, claims 18-24 are software *per se* and do not fall under one of the statutory categories. The Examiner realizes that the processing could be done via hardware; however, the claim does not require the use of any hardware.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 11-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Blinn et al. (US 5897622).

In regards to claim 1, Blinn teaches a method for building a user for managing a business operated through a web-based storefront over a network, the method comprising: adding a module to a user interface for a business operated through a web-based storefront the module providing access to a plurality of control panels, each control panel providing an interface to create or manage a web-based storefront for an online business engaged in a commerce of at least one of goods or services (See Column 6, Lines 26-46 and Figures 2-5);

and adding an area to the user interface, the area visually distinguished from and concurrently displayed with the module, the area providing information associated with the commerce involving the web-based storefront (See Column 6, Lines 26-46 and Figures 2-5, the merchant uses the “merchant browser” to access the different parts of the merchant system);

and providing the user interface to a user over a network (See Column 6, Lines 26-46 and Figures 2).

In regards to claim 2, Blinn teaches the method of claim 1, further comprising

adding a control panel in the plurality of control panels to the user interface the control panel visually distinct from and concurrently displayed with the module and the area, and the control panel providing plurality of advertising services for use in promoting the web-based storefront (See Column 10, Lines 5-17).

In regards to claim 3, Blinn teaches the method of claim 1, further comprising adding plurality of modules to the user interface, each module providing access to at least one of the control panels in the plurality of control panels (See Column 6, Lines 26-46 and Figures 2-5).

In regards to claim 4, Blinn teaches the method of claim 3, wherein a module in the plurality of modules provides access to a store management related control panel (See Column 6, Lines 26-46 and Figures 2-5).

In regards to claim 5, Blinn teaches the method of claim 3, wherein a module in the plurality of modules provides access to a web hosting related control panel (See Figure 2, "dynamic page generator").

In regards to claim 6, Blinn teaches the method user interface of claim 3, wherein a module in the plurality of modules provides access to a domain management related control panel or a mail service (See Figure 2, "dynamic page generator").

In regards to claim 7, Blinn teaches the method of claim 1, wherein the area displays the information associated with the commerce involving the web-based storefront in substantially real time (See Figure 2, Element 129).

In regards to claim 8, Blinn teaches the method user interface of claim 7, wherein the information displayed in substantially real time comprises at least one of a number

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of page views, sales data, a search data, a click trail, or an inventory data (See Figure 2, Element 129).

In regards to claim 10, Blinn teaches the method user interface of claim 7, wherein the information is displayed in a streaming text form in the area (See Figure 2, Element 131).

Claims 11 and 18 are similar in scope to claim 1; therefore they are rejected under similar rationale.

Claim 12 and 19 are similar in scope to claim 2; therefore they are rejected under similar rationale.

Claim 13 and 20 are similar in scope to claim 3; therefore they are rejected under similar rationale.

Claim 14 and 21 are similar in scope to claims 4-6; therefore they are rejected under similar rationale.

Claim 15 and 22 are similar in scope to claim 7; therefore they are rejected under similar rationale.

Claim 16 and 23 are similar in scope to claim 8; therefore they are rejected under similar rationale.

Claim 17 and 24 are similar in scope to claim 10; therefore they are rejected under similar rationale.

Claim 25 is similar in scope to claim 1; therefore it is rejected under similar rationale.

Claim 26 is similar in scope to claim 1; therefore it is rejected under similar

rationale.

Claim 27 is similar in scope to claim 10; therefore it is rejected under similar rationale.

Claim 28 is similar in scope to claims 4-6; therefore it is rejected under similar rationale.

In regards to claim 29, Blinn teaches the method of claim 28, wherein the first control panel further comprises an input selection mechanism configured to communicatively couple with a back end relating to the business function associated with the first control panel (See Figure 2).

Claims 30-32 are similar in scope to claim 1; therefore they are rejected under similar rationale.

Claims 33-35 are similar in scope to claims 30-32; therefore they are rejected under similar rationale.

Claims 36-38 are similar in scope to claims 30-32; therefore they are rejected under similar rationale.

Claims 39-41 are similar in scope to claims 30-32; therefore they are rejected under similar rationale.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blinn in view of Gershman et al. (US 6401085).

In regards to claim 9, Blinn teaches all the limitations of claim 7. Blinn does not specifically teach displaying information in a graphical form. Gershman teaches displaying information in graphical form (Column 42, Line 62 – Line 43, Line 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blinn with the teachings of Gershman and provide a graphical representation of data with the motivation to provide the user with a simpler way of analyzing data.

### ***Response to Arguments***

Applicant's arguments filed 12/16/2008 have been fully considered but they are not persuasive.



In regards to the Applicant's argument that Blinn fails to disclose any information describing building the user interface of the merchant browser, the Examiner respectfully disagrees. For example, Blinn teaches "[a] template defines the appearance of a page, such as the store home page 103 (FIG. 1), a product page or a customer information page. A portion of an example template is shown as 200 in FIG. 6. Templates include HTML and directives, which are keywords to the dynamic page generator 125 specifying how to build a page for display, such as what data to insert into the page and what queries to run against the database to obtain data for display on the page. A template may also include a wide variety of content, such as ActiveX controls, Visual Basic Scripts, forms, images, video and sound." (Column 7, Lines 42-52, also see Column 7, Lines 53-67).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BORIS PESIN whose telephone number is (571)272-4070. The examiner can normally be reached on Monday-Friday except every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Hong can be reached on (571) 272-4124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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